Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))	MB Docket No. 05-311

REPLY COMMENTS OF THE CITY OF HAGERSTOWN, MARYLAND

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The City of Hagerstown, Maryland ("City") is in the western part of the State of Maryland. The City is off of Interstate 70 which runs from the eastern portion to the western portion of the State. It is in an area of great historical significance and draws tourists from around the United States.

The City is filing Reply Comments with the Federal Communications Commission ("FCC") in response to the Second Further Notice of Proposed Rulemaking in the above-referenced docket. As more specifically described herein, the City supports the Comments of the multitude of LFAs ("Local Franchising Authorities") that oppose the FCC's proposed rules and opposes the comments of the cable industry's representatives.

I. EDUCATIONAL AND GOVERNMENTAL ACCESS AND I-NET USE IN THE CITY OF HAGERSTOWN, MARYLAND AND THE BENEFITS CONVEYED TO THE ENTIRE COMMUNITY

One cable operator, Antietam Cable Television, Inc. ("Antietam"), serves the City under a non-exclusive franchise[1]. That franchise agreement was the subject of lengthy cable franchise renewal negotiations with the cable operator. Antietam was skillfully represented in those negotiations by Davis Wright Tremaine LLP, one of the most respected law firms in the United

[1] Cable Television Franchise Agreement dated August, 2014 by and between the City of Hagerstown, Maryland and Antietam Cable Television, Inc.

States for negotiating cable franchises. All of the provisions in the City's and Antietam's Cable Television Franchise Agreement ("Franchise") from August, 2014 were freely negotiated and bargained for by the parties. Both parties took the time necessary to determine how the Franchise would meet community needs and interests and take into consideration the cost of meeting those needs and interests. The City was provided with two access channels and an Institutional Network (I-Net) which are highly utilized by governmental and educational entities[2].

Specifically, there are two downstream Educational and Governmental Access Channels ("EG Access Channels") provided for in the Franchise: one is a Governmental Access Channel for use by the City and the other is an Educational Access Channel to be used primarily by the public school system managed by the Washington County Board of Education ("BOE") and by Hagerstown Community College ("HCC"). There is also an opportunity for the provision of one additional downstream Access Channel for a maximum of three Access Channels. Up to two of the Access Channels will be delivered in High Definition digital format, subject to the satisfaction of various conditions.

The City is currently receiving 70 cents per month per residential subscriber for Access or I-Net capital purposes. Cable companies traditionally treat that type of amount as a line item on subscribers' bills. A number of City-owned and occupied buildings, fire stations, police stations and public libraries in the City which are passed by the cable system are receiving, without charge, a drop and one outlet of Basic Service and Expanded Basic Service. With regard to the public schools, Antietam is providing, without charge, one drop and one outlet of Basic Service and Expanded Basic Service to a location designated by the BOE within the City for further distribution to its schools.

The I-Net is a combination of dedicated fiber optic infrastructure ("DFOI") and a hybrid fiber coax ("HFC")-based cable modem connection over the residential cable system. The DFOI

[2] Franchise Section 10. Institutional Network and Exhibit B - Institutional Network of the Franchise.

not only provides the main Access origination connections, but also connections for video signal origination from the Kepler Theater and another HCC campus facility to the Learning Resource Center at HCC (where the Educational Access channel originates), and also from historic, community-oriented and other facilities in the City to City Hall for Access origination purposes.

The HFC I-Net is extremely beneficial to Fire and Rescue operations, and also to a variety of community building locations serving those within the City in lower socioeconomic levels. Again, it is evident that the I-Net helps facilitate services to multiple community constituencies, ***not just to the City itself.***

The I-Net, EG Access Channels and capacity have tremendous value ***not just to the City***, but to cable subscribers, programmers and the public at large. Students and their parents derive substantial benefits from the availability of the Educational Access Channel. Cable subscribers in the City benefit from the transparency in government operations provided by the programming on the City's Government Access Channel. In sum, all of the key communities in the City derive a valuable public benefit based on the negotiated provisions in the Franchise.

During the course of the last two cable franchise negotiations, the City has worked diligently to ensure that the benefits of Educational and Governmental Access programming reach all cable subscribers while ensuring, through Needs Assessments, that the needs assessed would be balanced with taking into account the reasonableness of the costs related to Antietam and the cable subscribers within the City. The needs and interests were presented to the cable operator, and then detailed, lengthy negotiations ensued in order to provide those EG Access Channels to subscribers under terms and conditions where the impact (including the cost impact) on the provider was taken into account. ***At no time, did the City ever impose EG Access Channel and I-Net capacity obligations on Antietam. The Cable Act specifically provides for the provision of Access***

Channels and I-Nets in the context of cable franchise renewal negotiations.[3] The cost has already been taken into account and is reflected in the negotiated terms of the Franchise.

Detailed Needs Assessment work takes months, and based on the often-contrasting viewpoints of the cable company, ensuing negotiations can take years. The City performed a comprehensive and thorough Needs Assessment to ensure that EG Access Channels, the I-Net and capacity were negotiated into the Franchise in a manner that reflects the best interest of City residents (including thousands of cable subscribers), the City, its Educational Access entities and the cable company.

It is important to emphasize again that in the City, the I-Net and EG Access capacity have substantial value, not only to the local government but to many third parties. This includes Hagerstown Community College and the BOE, which were given a shared Educational Access Channel. This also includes many other constituencies in the community related to the I-Net, including those that receive Fire and Rescue services as well as community centers, such as those focused on residents at a lower socioeconomic level.

Thus, the effective reach of EG Access and the I-Net is far beyond the LFA itself, and extends to a host of community and non-profit organizations, economic development groups, ethnic and minority entities, arts and cultural entities, senior and youth organizations -- literally key stakeholders throughout the entire community. All of these entities would be disenfranchised, if this capacity were to be offset at fair market value against franchise fees. Monetizing the capacity at a high amount could result in an offset that would make the capacity unaffordable.

Moreover, since EG Access capacity by definition is non-commercial in nature and therefore has no commercial value, the only cost to the operator for providing such capacity is the capital cost of provisioning EG Access Channels and the I-Net. Once they are implemented, such

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[3] 47 U.S.C. Section 521, et seq.

items require very little maintenance and continue to enable the full use of the capacity for the provision of EG Access programming and institutional communications.

The point here is that EG Access and I-Net capacity are not legitimate candidates as an offset against franchise fees. There is already an external pass-through mechanism for the cable operator under Federal law if it does not desire to absorb that cost. Under no circumstances, based on a plain reading of the United States Code, can EG Access Channel and I-Net capacity be offset against franchise fees.

Furthermore, it is widely understood that historically cable operators received a number of "free subscriber" drops from commercial programmers for the provision of cable service to City buildings, fire stations, police stations, libraries and schools. It is absolutely inequitable to allow cable operators to deduct the value of those services (especially if the value is based on a fair market figure) from franchise fees when there is little or no programming cost to them. For over three decades, cable companies throughout the country have provided free cable service as a valuable public service to City departments, fire and police stations, libraries and schools. There is no compelling reason to reverse that practice.

II. RESPONSE TO SPECIFIC QUESTIONS AND STATEMENTS INCLUDED IN THE FCC'S SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Through its "Second Further Notice of Proposed Rulemaking" in the matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), which Rulemaking was adopted September 24, 2018 and published in the Federal Register on October 14, 2018 (hereinafter "FNPRM"), the FCC has proposed issuing new rules interpreting relevant statutory provisions of the Cable Act.[4] The City submits the following reply comments

[4] "In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311".

regarding certain FCC questions and statements in support of other LFAs' comments and in opposition to cable industry's comments in this regard.

A. The FCC's Tentative Conclusions Are Not Supported by the Law

In the FNPRM, the FCC tentatively concludes that, "we should treat cable-related 'in-kind' contributions required by a franchising agreement as 'franchise fees' subject to the statutory five percent cap on franchise fees set forth in Section 622 of the Communications Act of 1934, as amended ('the Act'), with limited exceptions."[5] In this instance, the FCC lacks rulemaking authority to impair cable franchises. Since the inception of the Act, cable operators and local franchising authorities have negotiated cable franchises with explicit understandings of what are franchise fees. The United States Code specifically carves out matters that are not considered cable franchise fees (such as requirements or charges incidental to the awarding or enforcing of the franchise, including payment for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages).[6] The FCC is not empowered to include new items (such as any monetary value of an Access Channel or a customer service center) in the definition of "franchise fees".

The FCC's proposed rule to define and treat cable-related "in-kind" contributions required by a franchising agreement as "franchise fees" subject to the statutory five percent cap on franchise fees is not, and was never envisioned by Congress to be, necessary to carry out the provisions of the Act. There simply is no portion of the Act establishing "in-kind contributions" that may be offset against franchise fees.

The FCC's proposed rules would unlawfully impair the Franchise between the City and Antietam by forcing the "treatment" of non-franchise fee payments as "franchise fees," subject to the five percent statutory cap. The proposed rules could effectively eviscerate approximately

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[5] 83 FR 51911, 51913.
[6] 47 U.S.C. Section 542(g)(2)(D).

$400,000 in franchise fees annually currently received by the City. Accordingly, the City respectfully urges the FCC to decline to issue its proposed rules.

B. Section 622 of the Act is Unambiguous on the Definition of "Franchise Fees"

In the FNPRM, the FCC states, "we tentatively conclude that we should treat cable-related, in-kind contributions required by LFAs from cable operators as a condition or requirement of a franchise agreement as 'franchise fees' subject to the statutory five percent franchise fee cap set forth in Section 622 of the Act…We tentatively conclude that this interpretation is most consistent with the statutory language and legislative history and seek comment on our analysis."[7] The FCC's tentative conclusion is in error.

47 U.S.C. Section 542(g) of the Act (Section 622(g)(2)) clearly defines "franchise fees." It was for Congress to decide what constitutes "franchise fees", not the FCC. If the FCC's tentative conclusions are adopted, it will have, in fact, unlawfully overruled Congress which allows local franchising authorities to collect in a twelve-month period up to five percent of the cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services.[8] Put another way, the suggested offsets are an unlawful taking of the five percent franchise fee which has been in existence in innumerable communities for over 34 years.

(1) The Chevron Decision

It is common knowledge that the FCC must act in accordance with the Chevron decision. To the extent that the Act vests the FCC with the underlying rulemaking authority to carry out the "provisions of this Act," including Section 622, any subsequent formal order or rule issued thereupon would be subject to a deference analysis by a Court under the framework established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, Inc. 467 U.S. 837 (1984). The FCC is exceeding its statutory authority in trying to restyle Congress' unambiguous definition of franchise fees.

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[7] 83 FR 51911, 51914-51915.
[8] 47 U.S.C. Section 542(b).

It seems that the FCC will be creating unnecessary litigation by weighing in on the franchise fee definition.

A franchise fee is "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such".[9] In a freely negotiated franchise, the provision of EG Access Channel capacity, I-Nets, free cable services for specified locations and the establishment of a customer service center are not "assessments". It is common knowledge that an assessment is a unilateral levy rather than a bargained-for compromise. As such, the FCC has no reason or authority to interpret negotiated franchise requirements as "assessments" in an attempt to offset franchise fees. Why, after 34 years, has the FCC now taken upon itself to tentatively conclude that "cable-related in-kind" items should be deducted from franchise fees? The situation is further exacerbated because the FCC wants to deduct the "fair market value" of those in-kind contributions. Who will make the determination of what constitutes "fair market value" -- the City, Antietam or the FCC? Surely, with tens of thousands of local jurisdictions, the FCC is not going to take on that burden.

Further, is the establishment of a Customer service center/business office ("service center") in the City[10] a "cable-related in-kind" contribution? The establishment of a service center has the most beneficial effects for cable subscribers and Antietam, not the LFA, in that it provides a convenient location for subscribers to interact in person with the cable company. In fact, many customer service centers around the country are now also marketing locations, where subscribers can be "upsold" to higher levels of service, regardless of the initial purpose of their visit.

(2) The FCC's Proposed Rules Run Counter to the Congressionally Identified Purpose of Needs Assessments

There are many fundamental problems with the FCC's tentative conclusions. For example, what would be the purpose of conducting a Community Needs Assessment if the resulting findings,

[9] 47 U.S.C. Section 542(g).
[10] Franchise, Exhibit A - Customer Service Standards, (III)(B)(1).

negotiations and implementation (such as free cable service for City buildings and schools) could be deducted from cable franchise fees? Put another way, franchise fees, which are based on a completely separate, detailed negotiation on the components of gross revenues, would potentially be severely reduced or eliminated as a result of local governments implementing the findings of Community Needs Assessments.

Section 626(a)(1) of the Act clearly specifies that a franchising authority may, "on its own initiative…commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term."[11] A local franchising authority must take into consideration the community's future cable-related needs and interests and the cable operator's cost of meeting those needs and interests.

Needs Assessments involve key stakeholders such as the City, cable subscribers, schools, libraries, non-profits and businesses. That information is then factored into cable franchise renewal negotiations. Local governments should not be penalized, for example, for negotiating for EG Access Channels in order to meet community needs. The bottom line is that payment of franchise fees and meeting community needs/interests are two separate issues that the FCC is unlawfully, in unabashed violation of Congressional direction and intent, seeking to juxtapose.

C. PEG Capacity and PEG Capital Costs Are Not "Franchise Fees"

For cable franchises enacted after October 30, 1984, a "franchise fee" does not include "… capital costs which are required by the franchise to be incurred by the cable operator for Public, Educational, or Governmental Access facilities".[12] The FNPRM states that, "[t]he fact

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[11] 47 U.S.C. Section 546(a)(1).
[12] 47 U.S.C. Section 542(g)(2)(C).

that the Act authorizes LFAs to impose such obligations does not, however, mean that the value of these obligations should be excluded from the five percent cap on franchise fees."[13] The City and a multitude of other LFAs strongly disagree. *Res ipsa loquitur* -- the matter speaks for itself.

D. Institutional Network ("I-Net") Capacity Is Not "Franchise Fees"

In the FNPRM, the FCC writes:

> "[T]he Act authorizes LFAs to require that channel capacity be designated for PEG use and that channel capacity on I-Nets be designated for educational and governmental use. The fact that the Act authorizes LFAs to impose such obligations does not, however, mean that the value of these obligations should be excluded from the five percent cap on franchise fees…Section 622(g)(2) makes no mention of an I-Net-related exclusion, nor does it contain a general exclusion for all PEG related costs. Since Congress enacted the PEG and I-Net provisions at the same time it added the franchise fee provisions, it could have explicitly excluded those costs in addressing the scope of the PEG-related costs in that subsection if it had intended they not count toward the cap…We seek comment on this view."[14]

The text of 47 U.S.C. Section 531 is clear and plainly states that a franchising authority may require as part of a franchise that channel capacity be designated for public, educational, or governmental use. As clearly indicated by other LFAs, and in the case of Hagerstown, I-Net franchise provisions only become "requirements" after lengthy negotiations with cable operators, already taking into account the cost. Further, an Institutional Network "… means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers."[15] I-Net capacity is

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[13] 83 FR 51911, 51915-51916.
[14] 83 FR 51911, 51915-51916.
[15] 47 U.S.C. Section 531(f).

specifically separately defined from franchise fees and statutorily-required as channel capacity on institutional networks and, therefore, are not "cable-related in-kind contributions" of any sort. If Congress had wanted to include I-Net capacity as part of franchise fees, it could have done so in the Act.

E. The Entire Hagerstown Community Will Be Impacted by the FCC's Tentative Rulemaking

Franchise fees are an integral part of the City's and most LFAs' General Funds. The ramifications of the FCC's tentative conclusions are far-reaching. There is much more at stake than the loss of franchise fees which in itself could be devastating (approximately $3,200,000 over the remainder of the Franchise term in Hagerstown's case). For example, if EG Access capacity is treated as a "cable-related in-kind" contribution under the FCC's proposed rules, the City may have to choose between financial remuneration and carriage of the EG Access Channels. This will affect not only the transparency of local government (i.e., the Governmental Access Channel which is valued by City residents), but also the viability of the Educational Access Channel currently being shared between the BOE and Hagerstown Community College. Students, parents, teachers, faculty and adult education will all be severely disadvantaged if EG Access capacity is treated as an offset against franchise fees.

F. Response to Comments of NCTA - The Internet & Television Association

Not surprisingly, the NCTA - The Internet & Television Association ("NCTA") enthusiastically and wholeheartedly endorsed the tentative conclusion of the FCC.[16] "NCTA appreciates the Commission's carefully reasoned tentative conclusion on these issues and agrees that, as explained in greater detail below, the statutory language and Commission precedent compelled that these questions be answered in the affirmative. As the Commission wisely recognizes, a decision making clear that franchising authority actions that regulate non-cable

[16] Comments of NCTA - The Internet & Television Association dated November 14, 2018 in MB Docket No. 05-311.

services and exact benefits or fees in excess of the five percent statutory cap are unlawful, will help promote broadband investment, deployment and innovation, to the benefit of all Americans."[17]

Perhaps the NCTA has conveniently forgotten how its once nascent cable television industry grew to a virtual de facto wireline monopoly that provides cable services. If one were to reflect back to the 1980s, cable companies used to fiercely compete for the acquisition of cable television franchises. In the course of that competition, cable companies willingly provided free cable-related benefits to LFAs and schools, attempting to encourage local governments to grant them franchises. Even though the franchises that were granted were non-exclusive under Federal law, overbuild situations became the exception rather than the norm. Fast forwarding to present day, even companies like Verizon, with its huge valuation and market cap, have gradually retreated from their desire to provide additional competitive FiOS and other cable services. This retreat is not even remotely related to PEG and I-Net obligations, but rather is due to technological and other changes in the competitive communications environment.

As a matter of course, the largest cable companies in the country, such as Comcast, Charter (Spectrum) and Cox Communications, provide the triple play (video, voice and data). It is very difficult to imagine that those companies, which are represented by experienced, knowledgeable and skilled law firms, are somehow compelled into making "exactions" to local franchising authorities.

The underlying premise of the NCTA is in gross error. Nowhere was it incumbent upon Congress to list every possible incidental exclusion to the five percent franchise fee cap. In contrast, the NCTA has taken a totally untenable position: "This understanding is evident in the definition of 'franchise fee,' which 'includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity,' subject only to specific, enumerated exceptions. Thus, while franchising authorities and local governments may spend their five percent

[17] NCTA Comments at Page 1.

franchise fee in myriad ways, they may not (with the exception of small incidentals and capital costs for PEG channel access, as discussed below) exceed the five percent fee by demanding in-kind assessments."[18] As was already pointed out in these Reply Comments, franchises are negotiated contracts, not unilateral impositions upon cable operators. There are no demands, there are no assessments -- there are only negotiated franchise provisions, which become requirements once the franchise is signed.

NCTA's Comments go on to cite examples of what the NCTA perceives as unbargained for exactions. There are tens of thousands of cities, boroughs, towns, villages and counties in this country. Conveniently and wrongly, as some of the jurisdictions cited have or will assert, a handful of examples does not persuasively reflect a clear picture of what is in cable franchises.

As a matter of fact, for over three decades, cable companies have willingly provided free Basic or Expanded Basic Service to city buildings, schools, police and fire stations, and libraries throughout the United States. The City applauds Antietam and other cable companies for providing those greatly appreciated services. As we now live in a nation ever confronted by random shootings and threats to our security because of terrorism, the news and information that can be provided by the cable companies to schools, public safety locations and like entities is even more critical.

What becomes lost in the translation is that cable companies, for all intents and purposes, have had their cable rates deregulated. As such, they have been able to increase their rates to cover the cost of providing cable services (if there is any such cost at all, or at best the cost is minimal) to governmental entities and schools. Now, the NCTA is advocating for offsets against franchise fees at fair market value. "*First*, any in-kind obligation that is not referenced in the Cable Act must be negotiated at its fair market value, and if agreed to by the cable operator, must count toward the

[18] NCTA Comments at Page 41.

franchise fee cap."[19] This would result in the outrageous occurrence of the cable operator making a greater profit on "free services" than on retail subscriber services.

Next, the NCTA erroneously argues that Congress somehow should have taken it upon itself to think of every possible exclusion to cable franchise fees when it passed the Act. "*Second*, cable-related exactions that are referenced in the Cable Act, once negotiated, may be excluded from the franchise fee cap only if Congress has specifically excluded them from the franchise fee definition, as it has done for capital costs required to be incurred by the cable operator for PEG access facilities."[20]

Congress meticulously listed the types of items which should be included in the franchise fee definition. It is up to the United States Senate and U.S. House of Representatives to change the law, not the FCC nor the NCTA.

G. Response to Comments of the American Cable Association

Again, not surprisingly, this Industry association, the American Cable Association ("ACA") agreed with the tentative conclusions of the FCC.[21] Perhaps the most troubling matter to the City was the repetitious use of the word "exaction" throughout the ACA's filing. To the common lay person, the word "exaction" connotates something that was extracted or obtained by one party that is in a superior position to another. It is difficult to comprehend how a city could possibly "exact" fees or non-monetary contributions from cable companies that are virtually promised a right of renewal under the Act. The ACA referred to "... longstanding relationships and extensive experiences with LFAs, and, as a rule, these operators find these relationships to be harmonious

[19] NCTA Comments at Page 46.
[20] NCTA Comments at Page 47.
[21] Comments of the American Cable Association on the Second Further Notice of Proposed Rulemaking dated November 14, 2018.

and productive."[22] Similarly, LFAs throughout the country view their relationship with their cable operators positively and take those relationships very seriously.

In the current environment, cable operators typically deploy the "triple play" (video, voice and data services). In doing so, cable operators generate significant revenue and highly profitable rates of return. As those gross revenues often equate to millions of dollars for each cable operator per LFA, it is perplexing why the FCC or the Courts would ever consider free or discounted cable services for LFAs and schools as some sort of an "exaction". In addition to modifying its tentative conclusion, it is time for the FCC to inject some pragmatism and common sense into its analysis. For all these years, cable companies have flourished monetarily, even when they have provided free or discounted cable services. It is difficult to conceive of any sort of argument that would somehow imply that the exclusion of those items from franchise fees has harmed cable operators.

H. Response to Comments of Verizon

Verizon, like others in the industry, are wholly supportive of the FCC's tentative conclusions. Verizon claimed that "Commission proposals to reform the local franchising process will benefit consumers by slowing the rising costs of video service and encouraging greater video and broadband deployment."[23]

It is common knowledge that cable operators have virtually free rein to charge subscribers any amounts they wish because of cable rate deregulation. Multiple System Operators ("MSOs") have availed themselves of that opportunity and unapologetically raised cable rates for years. Furthermore, cable franchise fees are routinely passed on as a line item on subscribers' bills. If the FCC were to follow through on its tentative conclusion and allow items such as free or discounted cable service to be treated as franchise fees, does the FCC really believe that the cable operators will lower their rates and pass the savings on to the cable subscribers instead of increasing the rates

[22] ACA Comments at Page 2.
[23] Comments of Verizon dated November 14, 2018, at Page 1.

to keep the total bill the same and realizing a windfall profit? Yet Verizon has asserted that, "Ensuring that all contributions and payments to LFAs are treated as 'franchise fees' subject to the statutory five percent franchise fee cap will cabin those costs."[24]

Verizon is not a newcomer to the cable television business. For years, it has engaged in the aggressive buildout of its FiOS service. It knows full well that, as a matter of good corporate citizenship, providing free cable services to select locations is tantamount to giving back to a community an outstanding public service at a de minimis cost.

The City is disappointed that Verizon and other cable operators now view this relationship as a one-way street: make as much money as you can in a community, diminish your commitment to good public service and effectively reduce franchise fees for your LFA partners so that they no longer have the funds to carry out their public service responsibilities through their General Funds. If the FCC cannot see the inequities it is creating, then the probable outcome will be protracted litigation and it will be up to the Courts to override the FCC's tentative conclusions.

Verizon has gone on to state that, "Obviously, excessive or burdensome demands for cable-related, in-kind contributions (e.g., discounted or free video services to local governments) could have a similar deterrent effect, discouraging new entrants from deploying video and broadband services and incumbents from renewing franchise agreements."[25] It is hard to imagine that any incumbent cable operator in the entire United States would be discouraged from renewing its lucrative franchise agreement because it provides free or discounted video services to schools and city buildings. That notion is simply preposterous, and Verizon notably has not shown any evidence that this has acted as a deterrent to Verizon's cable business.

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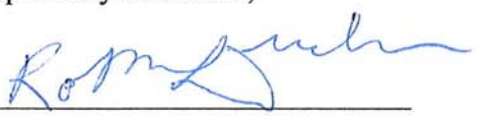
[24] Verizon Comments at Page 2.
[25] Verizon Comments at Page 4.

III. CONCLUSION

For the reasons set forth herein, the City strongly urges the FCC to, and believes the FCC must, reconsider its tentative conclusions. The City thanks the FCC and its Commissioners for the opportunity to submit Reply Comments in this proceeding.

Respectfully submitted,



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